

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

MICHAEL LEE ROSE,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 06-370-JJF
)	
D.O.C. COMMISSIONER STAN TAYLOR,)	
First Correctional Medical, Correctional)	
Medical Services, Dr. Niaz)	TRIAL BY JURY
)	OF TWELVE DEMANDED
Defendants.)	
)	

**MOTION OF DEFENDANTS, CORRECTIONAL MEDICAL SERVICES, INC.
AND DR. NIAZ, TO DISMISS PLAINTIFF'S AMENDED COMPLAINT,
INCORRECTLY DESIGNATED AS "MOTION TO AMEND"¹**

COMES NOW Correctional Medical Services, Inc. ("CMS") and Dr. Niaz, by and through their undersigned counsel, and respectfully move this Honorable Court to enter an Order pursuant to Federal Rules of Civil Procedure 12(b)(6) dismissing Plaintiff's Amended Complaint, incorrectly designated as "Motion to Amend", for failure to state a claim upon which relief can be granted. In support of this Motion, CMS and Dr. Niaz offer the Memorandum of Points and Authorities filed simultaneously herewith.

MARSHALL, DENNEHEY, WARNER,
COLEMAN AND GOGGIN

BY: /s/ Eric Scott Thompson
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Attorneys for Defendant,
Correctional Medical Services, Inc. and Dr. Niaz

June 10, 2008

¹ CMS waives its right to file an Opening Brief and submit this Motion in lieu thereof pursuant to Local Rule 7.1.2. However, CMS reserves the right to file a Reply Brief.

I hereby certify that I have served upon all counsel of record a correct copy of the *MOTION OF DEFENDANT, CORRECTIONAL MEDICAL SERVICES, INC., TO DISMISS PLAINTIFF'S AMENDED COMPLAINT, INCORRECTLY DESIGNATED AS "MOTION TO AMEND"* in the above-captioned matter this date by electronic service through CM/ECF or First-Class U.S. Mail.

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

BY: /s/ Eric Scott Thompson

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DATED: June 10, 2008

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Defendants.

Civil Action No. 06-370-JJF

TRIAL BY JURY

OF TWELVE DEMANDED

ORDER

AND NOW, this _____ day of _____, 2008, upon consideration of the Motion of Defendants, Correctional Medical Services, Inc. and Dr. Niaz, to Dismiss Plaintiff's Amended Complaint, Incorrectly Designated as "Motion to Amend" and any Response thereto, it is hereby ORDERED that the Motion is GRANTED in favor of Defendants, Correctional Medical Services, Inc. and Dr. Niaz, and all claims therein against Defendants, Correctional Medical Services, Inc. and Dr. Niaz, are dismissed with prejudice.

J.